IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 332 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

CHUNILAL MANJI KHATRI

Versus

HASANALI KARIMAD MAREDIA

Appearance:

MS KUSUM M SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

MR AJ DESAI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/07/2000

C.A.V. JUDGEMENT

1. This Revision Application is preferred to challenge the judgment and order dated 17.9.1990 of the Special Judge of Banaskantha District at Palanpur in

Special Case No.8 of 1985.

2. The petitioner is the original accused who was charged with the offences under Sections 3 (2) (c), 3 (2) (e), 3 (2) (ii) read with Section 7 (1) (ii) of the Essential Commodities Act, 1955. Before the framing of the charge, the complainant, who is the Supply Inspector, was examined and cross-examined and, after the framing of the charge, the accused was examined under Section 313 of the Code of Criminal Procedure wherein he denied in detail the documents and the evidence set up against him. The complainant did not adduce any further evidence and the charges were sought to be proved on the basis of the sole testimony recorded as mentioned earlier and the panchnama and the other documentary evidence which were produced by the complainant. Thus, the prosecution rested with the sole testimony of the complainant and the panchnama and the other documents produced by him without the authors or signatories of such documents being examined.

3. It is the case of the prosecution that, on 16.10.1984, the complainant and his colleague intercepted an autorickshaw carrying five tins, each containing 18 litres of kerosene, along with the accused. Then the rickshaw was taken to the office of the Gram Panchayat and the five tins of kerosene were recovered and kept in the office of the Gram Panchayat where a panchnama was alleged to have been prepared. As the accused had no permit or licence for possessing that quantity of kerosene, the complaint was filed as late as on 24.9.1985. It is alleged that the statement of the accused was recorded and the same is produced with the panchnama at Exh.6 and 5 respectively. It has to be noted that, according to the alleged statement of the accused at Ex.6, he had purchased kerosene from a fair price shop at the rate of Rs.38 per tin to sell it at the rate of Rs.2 per kg. It is stated that each tin contained 18 litres of kerosene. While the signature of the accused on the record at each place is in Hindi, the statement is recorded in Gujarati. While the accused has in his statement before the Court categorically denied that the five tins of kerosene were seized from his possession and stated that the panchnama was false, he has also stated that he had not given any statement before the Inspector and his signature was obtained on a blank paper. In the circumstances, it is obvious that the accused could not have bought the kerosene at the rate of more than Rs.2 per litre to sell the same in black market at Rs.2 per litre as alleged. The recording of statement in Gujarati and the signature thereunder in

Hindi not only makes the statement doubtful but the contents of the statement makes the testimony of the complainant also very doubtful.

4. In the facts of the present case, the learned Judge of the trial Court has based the conviction of the accused only on the uncorroborated testimony of the complainant, which is obviously very doubtful as seen earlier. Not only that, other corroborative evidence is not led before the Court but the documentary evidence in the form of receipt from the autorickshaw driver and the panchnama are exhibited in evidence only on the basis of oral evidence of the complainant without examining anyone about their authenticity and relied upon the same for arriving at the conclusion that the five tins of kerosene were recovered from the possession of the accused. Unfortunately, without being conscious of this fundamental fallacy, the trial Court has embarked upon a detailed discussion on the issue whether the statement made before the complainant amounted to a confession made before a police officer under Section 25 of the Indian Evidence Act.

5. In the facts of the present case, clearly a serious error and illegality has been committed in relying upon the sole, uncorroborated and unreliable testimony of the complainant and other attending circumstances have also been lost sight of. The documentary evidence is also admitted in evidence and relied upon without proof of its genuineness and oral evidence of their authors. The record and proceedings of the original Special Case were called for and examining the same, it appears that no one except the complainant has been examined in evidence. Therefore, the conviction of the present applicant cannot be sustained in law and the impugned judgment and order are required to be quashed and set aside in the interest of justice.

6. In the result, the application is allowed. The impugned order of conviction of the petitioner made by the learned Special Judge of Banaskantha District at Palanpur in Special Case No.8 of 1985 is quashed and set aside. The accused is hereby acquitted and ordered to be set free, unless required in any other case, and the bail bonds stand cancelled.

Sd/-

(KMG Thilake)

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